



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 131 0070]

Honeywell International, Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before October 15, 2013.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/honeywellintermecconsent> online or on paper, by

following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “Honeywell Intermec, File No. 131 0070” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/honeywellintermecconsent> by following the instructions

on the web-based form. If you prefer to file your comment on paper, mail or deliver your

comment to the following address: Federal Trade Commission, Office of the Secretary, Room

H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Morris (202-326-3156), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 13, 2013), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 15, 2013. Write “Honeywell Intermec, File No. 131 0070” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or

foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/honeywellintermecconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Honeywell Intermec, File No. 131 0070” on

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 15, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted from Honeywell International Inc. ("Honeywell"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement"). The Consent Agreement, which contains a proposed Decision and Order ("Order"), is designed to remedy the anticompetitive effects resulting from Honeywell's proposed acquisition of Intermec Inc. ("Intermec").

Pursuant to an agreement signed on December 9, 2012 (the "Agreement"), Honeywell plans to acquire 100 percent of the voting securities of Intermec for an aggregate purchase price of approximately \$600 million (the "Acquisition"). The proposed Acquisition would result in an effective duopoly in the market for two-dimensional scan engines ("2D scan engines") in the United States. The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and

Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. § 45, by lessening competition in the market for 2D scan engines in the United States.

The Consent Agreement remedies the alleged violation by replacing the lost competition in the 2D scan engine market that would result from the proposed Acquisition. Under the terms of the Consent Agreement, Honeywell will license all of the United States patents necessary to make two-dimensional scan engines (“2D scan engines”) to Datalogic IPTECH s.r.l., a subsidiary of Datalogic S.p.A. (“Datalogic”).

The Consent Agreement and proposed Order have been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement and the comments received, and decide whether it should withdraw, modify or make final the Consent Agreement and proposed Order.

II. The Parties

Honeywell is a diversified technology and manufacturing company headquartered in Morristown, New Jersey with worldwide operations. Honeywell develops, manufactures and sells 2D scan engines and devices into which 2D scan engines are incorporated through its wholly-owned subsidiaries, Hand Held Products, Inc. and Metrologic Instruments, Inc. d/b/a Honeywell Scanning and Mobility.

Headquartered in Everett, Washington, Intermec is a leading manufacturer and seller of scan engines and other automated identification and data capture equipment including barcode scanners, barcode printers, RFID systems and voice recognition systems.

III. Scan Engines

The relevant line of commerce in which to analyze the effects of the proposed

Acquisition is 2D scan engines. 2D scan engines have a 2D image sensor that captures an image (such as a barcode) through a digital photograph. The 2D scan engine then translates the image into a digital format that computer processors can interpret and analyze. Products such as retail store scanners, kiosks and rugged mobile handheld computers utilize 2D scan engines to capture and decode digital data.

Customers of 2D scan engines demand compact scanners that can accurately read all types of one-dimensional and 2D images, and that have a good field of view and reading range. 2D scan engines are the only scanning products that meet these specifications. One-dimensional scan engines are unable to read most types of 2D images and are not viable substitutes for 2D scan engines. Scanning functions on smart phones and similar consumer devices do not offer the speed, accuracy, reading range or field of view of 2D scan engines. As a result, customers would likely not switch to alternate scanning products (such as one-dimensional scan engines or smart phones) in response to a five to ten percent increase in the price of 2D scan engines in sufficient numbers to make that price increase unprofitable to a hypothetical monopolist.

The relevant geographic area in which to analyze the effects of the Acquisition on the 2D scan engine market is the United States. 2D scan engine suppliers who want to sell their scan engines to customers who intend to incorporate the scan engines into products that will be sold into the United States must own or have a license to U.S. patents covering 2D scan engine technology and be able to indemnify their customers against the threat of a patent suit.

The market for 2D scan engines in the United States is highly concentrated. Honeywell, Intermec and Motorola are the three most significant participants in the 2D scan engine market in the United States. Post-Acquisition, the combined share of the two firms – Honeywell and Motorola – would be in excess of 80%. Additionally, Honeywell, Intermec and Motorola are the

only 2D scan engine firms in the U.S. that have deep and broad portfolios of relevant intellectual property (“IP”) that insulate them and their customers from infringement suits.

There are a number of fringe 2D scan engine manufacturers who sell 2D scan engines to customers outside of the United States, and to a lesser extent, to customers who incorporate the scan engines into products sold in the United States. In aggregate, the fringe competitors’ account for less than 20% of all 2D scan engines sold in the United States. While the fringe competitors are increasingly important competitors to Honeywell, Intermec and Motorola outside of the United States as a result of their growing technical capabilities, they are constrained from expanding their sales of 2D scan engines into products that will be sold in the United States because they do not possess the relevant U.S. IP rights. Without ownership of, or a license to, the relevant IP, the fringe competitors are not a significant competitive constraint to Honeywell, Intermec and Motorola for the sale of 2D scan engines for use in products sold in the United States.

The proposed Acquisition increases the likelihood of coordinated interaction between Honeywell and the major remaining player in the market, Motorola. Industry participants recognize that Honeywell, Intermec and Motorola are the “Big Three” players in the market. As noted above, the fringe 2D scan engine competitors do not constrain the pricing of the “Big Three.” Accordingly, the proposed Acquisition increases the risk that the two remaining players, Honeywell and Motorola, will compete less aggressively, diminishing the level of competition in the market.

New entry, repositioning or expansion will not be sufficient to deter or counteract the anticompetitive effects of the proposed Acquisition in a timely manner. The most significant barrier to entry and expansion in the United States is IP. For example, although 2D scan engine

companies other than Honeywell, Intermec and Motorola have the ability to, and do, manufacture 2D scan engines, customers who incorporate the scan engines into products for sale into the United States are generally unwilling to purchase from them because they cannot provide customers with indemnification from patent infringement suits.

IV. The Consent Agreement

The Consent Agreement eliminates the competitive concerns raised by Honeywell's proposed acquisition of Intermec by requiring Honeywell to license Honeywell and Intermec's U.S. patents covering technology used in 2D scan engines. The Consent Agreement requires Honeywell to license the relevant patents to Datalogic, or another licensee approved by the Commission through a license agreement approved by the Commission.

Datalogic has the industry experience, reputation and resources to replace Intermec as an effective competitor in the U.S. 2D scan engine market. It is headquartered in Bologna, Italy, with its North American design headquarters in Eugene, Oregon. Datalogic is well positioned to replace the competition that will be eliminated as a result of the proposed Acquisition. The company has developed 2D scan engines that it markets outside of the U.S. These 2D scan engines are of similar quality to those offered by Honeywell and Intermec. However, Datalogic does not currently compete against Honeywell and Intermec in the sale of 2D scan engines in the U.S. Datalogic also sells products that incorporate 2D scan engines, such as in-counter checkout scanners and airport kiosk scanners (where it is one of the global leaders), hand held scanners (where it is a top player globally), and rugged mobile computers (where it is the fourth-largest player globally).

Pursuant to the Consent Agreement, Datalogic (or another approved licensee) would receive a license to all of the Honeywell and Intermec U.S. IP covering technology used in 2D

scan engines and related devices (excluding non-retail fixed scanners) necessary to produce and sell 2D scan engines in the U.S. Obtaining the proposed license from Honeywell would enable the approved licensee to sell products without fear of an IP suit and to offer the required indemnification to market 2D scan engines in the U.S. The license extends for twelve years, which is the life of the primary blocking patents owned by Honeywell. In addition to licensing the U.S. patents, the Consent Agreement prohibits Honeywell from filing infringement actions against the approved licensee, its suppliers and customers based on the approved licensee's 2D scan engines or related devices. This provides the approved licensee with global freedom to research, develop, market and sell its 2D scan engines and related devices without fear of infringement suits by Honeywell. The Consent Agreement also prohibits Honeywell from selling or assigning the patents included in the license to anyone who does not agree to abide by the terms of the Order with respect to those acquired patents.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

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